

From: geekfest
To: Microsoft ATR
Date: 1/4/02 9:53am
Subject: Microsoft Settlement

It's unbelievable that after Microsoft has been found guilty in two courts the Department of Justice would accept a settlement agreement that was earlier presented and rejected. This case sets a terrible precedent. Microsoft has been convicted and the Department of Justice has decided to let Microsoft determine its own punishment. I'm not aware of any other case in which the guilty party was permitted to write its own settlement agreement.

This approach to resolution generates more problems than it solves. Where is the incentive to obey the law? Microsoft gets to keep its illegally acquired gains. Its competitor's position in the market has been destroyed. It has been found guilty in two courts and will now walk away in better business position than it was before it broke the law. Based on this pattern will Microsoft choose to break the law in the future? Will other corporations do the same? The precedent established by this settlement agreement will not only reward Microsoft for deciding to break the law, it will penalize those companies that choose to obey it, and encourage other companies faced with similar competitive problems to ignore the law in the formulation of their solutions. The consumer will be harmed in the future simply because the threat of future litigation by the government will be meaningless. Microsoft has already been through litigation, been found guilty, and has been allowed to keep everything they acquired by violating the law.

Without punitive damages that make violation of the law an ineffective approach to solving business competitive problems corporations will use illegal methods. The laws intended to protect the market and consumers will get pushed aside by illegally maintained monopolies.

Any settlement at the least must have punitive monetary damages that remove any monetary gain achieved by choosing to violate the law. In addition any settlement of a corporation convicted of illegally maintaining its monopoly must include either structural changes in the corporation that prohibit future violations, or a consent agreement that has significant predetermined fines and penalties that can be applied by government regulators (or in this case the oversight committee). The fines and penalties must be large enough to effectively stop illegal behavior before the behavior can damage the marketplace and consumers and they must be applied quickly enough to stop damage to the marketplace and consumers. If Microsoft feels the committee assessment is inappropriate let it go to court to get its money back. Since Microsoft is a repeat offender (they violated their original consent agreement and have been convicted of illegally maintaining their monopoly) it's not unreasonable to defend against the possibility that they may continue to exhibit illegal behavior in the future.

Since any agreement will have different possible interpretations the

only effective agreement will be one in which the oversight committee has enforcement powers. It will force Microsoft to either argue their interpretation of the agreement with the committee chosen to represent the public interest or return to court for a formal determination.

The proposed consent agreement does nothing to discourage illegal behavior by Microsoft and sets a precedent that will harm consumers and the market in the future. I urge the court to reject this proposed settlement as inadequate protection for consumers and force a more punitive settlement or conclusion to this case that will send a clear message that laws that prevent the illegal maintenance of a monopoly will be strictly enforced. If the court fails to send this message then the laws may as well be repealed for all the good they will do.

Thank you for reviewing this comment.

Sincerely,

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